

Document #4689

12/5/85

MEMORANDUM

Dec. # DECEMBER 5, 1985
4689

TO: Boston Redevelopment Authority and
Stephen Coyle, Director

FROM: Linda Bourque, Director of Zoning
Martha R. Bailey, Senior Project Coordinator
Karen Jennings-Flynn, Assistant Development Counsel

SUBJECT: **APPROVAL OF DEVELOPMENT IMPACT PROJECT PLAN AND
DEVELOPMENT IMPACT PROJECT AGREEMENT FOR THE HERITAGE
ON THE GARDEN PROJECT ON THE ARLINGTON/HADASSAH
SUBPARCEL OF PARCEL 1 IN THE PARK PLAZA URBAN RENEWAL
AREA.**

Ronald M. Druker and David C. Bell, Trustees of The Heritage Residential Realty Trust and of The Heritage Commercial Realty Trust, request approval of a Development Impact Project Plan for construction of a new 12-story mixed-use building, containing residential condominiums, office and retail space and parking. The project, to be known as The Heritage On The Garden, is sited on approximately 44,300 square feet of land located between Arlington Street, Boylston Street, Park Plaza (formerly Providence Street) and the Bradley Building. The building will include 494,000 gross square feet of floor area with the largest amount, 219,000 square feet, dedicated to 87 residential condominium units, 130,000 square feet to office space and 61,000 square feet to retail space including restaurants. In addition there will be 175 residential and office parking spaces below ground on two levels accessed from Park Plaza. Two off-street truck loading bays concealed by a door are beside the garage entrance. The height of the building is in accordance with the Park Plaza Urban Renewal Plan controls, a limit of eighty-five feet on Boylston Street with a 50 foot setback to a limit of 130 feet on the Park Plaza element of the building. The architect is The Architects Collaborative, Cambridge, Massachusetts, with Howard Elkus as Principal Architect.

The development has undergone extensive design review by Authority staff and by the Park Plaza Civic Advisory Committee.

Some demolition has occurred on the site already with more to take place by the end of the year. Full construction will start in March 1986 and is expected to be completed by the spring of 1988.

Construction jobs equal to 975 person-years will be created. The completed project will be the locus for approximately 620 permanent jobs.

The Developer will submit a Residents Construction Employment Plan, which shall ensure that of the construction employment opportunities created in the Project, 50% will be made available to Boston residents, 25% to minorities and 10% to women. The developer has also agreed to formulate an Employment Opportunity Plan which will describe the developer's good faith efforts to achieve a goal that 50% of employment opportunities created by the project will be made available to Boston residents. This plan will be submitted for the Authority's approval no later than one year from the execution of the Development Impact Project Agreement.

In accordance with the Development Impact Project Plan and Agreement a linkage payment of approximately \$445,000 shall be paid by the developers to the Boston Redevelopment Authority, acting in its own behalf and as a escrow agent for the Neighborhood Housing Trust, for development of low and moderate income housing in the City.

The developer has also agreed to make two additional contributions for the public benefit. One is a voluntary supplemental payment to the Boston Housing Partnership, Inc. in an amount equal to the difference between \$1,000,000 and the amount of the linkage payment, or approximately \$555,000. The second is a contribution of \$75,000 per annum, escalated every three years according to the C.P.I., from the commercial portion of the project to an organization whose sole purpose is the maintenance and improvement of the Boston Public Garden.

We therefore recommend that the Authority approve the attached Development Impact Project Plan for The Heritage On The Garden development and authorize the Director to execute the Development Impact Project Agreement.

Appropriate votes follow:

VOTED: That in connection with the Development Impact Project Plan for The Heritage On The Garden project, to be erected on the Arlington/Hadassah sub-parcel of Parcel 1 of the Park Square Urban Renewal Project Area, presented at a public hearing duly held at the offices of the Authority on December 5, 1985, and after consideration of the evidence presented at that hearing, the Boston Redevelopment Authority finds that said Plan (1) conforms to the general plan for the City of Boston as a whole; (2) contains nothing that will be injurious to the neighborhood or otherwise detrimental to the public welfare; and (3) does adequately and sufficiently satisfy all other criteria and specifications for a Development Impact Project Plan as set forth in Article 26 of the Boston Zoning Code as amended; and further

VOTED: That pursuant to the provisions of Article 26 of the Boston Zoning Code as amended, the Boston Redevelopment Authority hereby approves the Development Impact Project Plan for The Heritage On The Garden project on the Arlington/Hadassah sub-parcel of Parcel 1 of the Park Square Urban Renewal Project Area. Said Development Plan is embodied in a written document entitled "Development Impact Project Plan The Heritage On The Garden Arlington/Hadassah Sub-parcel of Parcel 1 of the Park Plaza Urban Renewal Area", dated December 5, 1985, and in a series of design development drawings listed in Exhibit C of said document; said document and plans shall be on file in the office of the Director of Zoning of the Authority; and further

VOTED: That the Authority hereby authorizes the Director to execute, in the name and on behalf of the Authority and as an escrow agent for the Neighborhood Housing Trust, a Development Impact Project Agreement with the developer of The Heritage On The Garden project and to certify, in the name of the Authority, that plans submitted to the Building Commissioner in connection with said project are in conformity with said Development Impact Project Plan and that the developer has entered into an Agreement with the Authority to be responsible for linkage payments, and further

VOTED: That in reference to petitions to be brought by Ronald M. Druker and David C. Bell, Trustees of The Heritage Residential Realty Trust and The Heritage Commercial Realty Trust, for the conditional use and variances listed in the Development Impact Project Plan for The Heritage On The Garden project, which is approved by the Authority today, the Boston Redevelopment Authority recommends approval provided that the Authority and the Developer have entered into a Development Impact Project Agreement and that plans are submitted to the Authority for design review approval to ensure that the plans are consistent with the plans previously approved by the Authority and with the Development Impact Project Plan.

FACT SHEET
THE HERITAGE ON THE GARDEN
ARLINGTON/HADASSAH SUB-PARCEL
OF
PARCEL I OF THE PARK PLAZA URBAN RENEWAL AREA

DEVELOPMENT TEAM

Developer: Ronald M. Druker and David C. Bell as Trustees
of The Heritage Residential Realty Trust and
as Trustees of The Heritage Commercial Realty
Trust.

Architect: The Architects Collaborative, Inc., Cambridge,
Massachusetts.

SITE DESCRIPTION

Location: The land (excluding the lot known as 250
Boylston Street) lying between Arlington Street,
Boylston Street, Hadassah Way and Park Plaza
(formerly Providence Street) in the City of
Boston, with certain small portions of adjacent
lands owned by the City of Boston.

Size and

Condition: Approximately 44,300 square feet of land, mostly
occupied by buildings, all of which will be
demolished.

PROJECT

DESCRIPTION: Construction of a new 12-story above-grade and
three-story below-grade building containing
approximately 494,000 gross square feet of floor
area with approximately 175 parking spaces on
the first and second below-grade levels for use
by tenants and occupants of the building.
Approximately 61,000 square feet of floor area
will be devoted to retail uses, approximately

130,000 square feet of floor area will be devoted to offices, and approximately 219,000 square feet of floor area will be devoted to residential condominium units.

Height:

Exclusive of mechanical penthouses, eighty-five feet in the first fifty feet of depth from Boylston Street, 130 feet in other portions of the Site.

FAR Square

Footage:

The floor area ratio of the building, not including the underground parking area, will not exceed 10.0, which is the limitation on the Site. The gross floor area, including the below-ground garage space, is approximately 488,000 square feet with a floor area ratio of approximately 11.02.

Estimated

Construction Time: Demolition has begun and is expected to be completed in the Winter of 1985. Construction is expected to be completed by the Spring of 1988.

PROJECTED

NUMBER OF

EMPLOYEES:

An estimated 975 jobs (computed in person-years) will be created during construction. The Developer has agreed to formulate an Employment Opportunity Plan, which will detail the Developer's good faith efforts to achieve a goal that 50% of the permanent employment

opportunities created in the Project will be made available to Boston residents. Further, the Developer will submit a Residents Construction Employment Plan, which shall ensure that of the construction employment opportunities created in the Project, 50% will be made available to Boston residents, 25% to minorities and 10% to women.

DEVELOPMENT

IMPACT PROJECT

EXACTION:

As required by Section 26-3 of the Boston Zoning Code, the Developer will enter into a Development Impact Project Agreement with the Boston Redevelopment Authority acting in its own behalf and as an escrow agent for the Neighborhood Housing Trust calling for a linkage payment of approximately \$445,000.

ADDITIONAL

PUBLIC BENEFITS:

The Developer has agreed to make a voluntary supplemental payment to The Boston Housing Partnership, Inc. in an amount equal to the difference between \$1,000,000 and the amount of the linkage payment. The Developer has also agreed that, commencing with initial occupancy of the retail and office portions of the Project, and continuing during the life of the Project, the commercial portion of the Project will contribute \$75,000 per annum (escalated every three years by a percentage equal to the cumulative change in the Consumer Price Index, but in no event by more than five percent) to an organization whose sole purpose is the

maintenance and improvement of the Boston Public Garden.

ZONING DEVIATIONS

REQUIRED:

Variances will be required for the following matters: usable open space (Sections 13-4 and 17-1), front yard (Sections 13-4, 18-1 and 18-4), side yard (Sections 13-4, 18-4 and 19-6), traffic visibility across a corner (Section 18-3), parapet set-back (Section 21-1), off-street loading (Section 24-1) and perhaps floor area ratio (Section 15-1). A Conditional Use Permit will be required for off-street parking accessory to office and retail uses (Sections 3-1A and 8-7 Use Item No. 72).

BOSTON REDEVELOPMENT AUTHORITY
December 5, 1985

DEVELOPMENT IMPACT PROJECT PLAN
THE HERITAGE ON THE GARDEN
ARLINGTON/HADASSAH SUBPARCEL OF
PARCEL I OF THE PARK PLAZA URBAN RENEWAL AREA

Developer: Ronald M. Druker and David C. Bell as Trustees of The Heritage Residential Realty Trust and as Trustees of The Heritage Commercial Realty Trust.

Architect: The Architects Collaborative, Inc., Cambridge, Massachusetts.

Location and Description of the Site: Certain parcels of land containing in the aggregate approximately 44,300 square feet, shown on Exhibit A hereto. The Site includes all of the land lying between Arlington Street, Boylston Street, Hadassah Way and Park Plaza (formerly Providence Street) in the City of Boston, with the exception of the lot known as 250 Boylston Street, and will require the discontinuance as public ways of a small portion of Providence Street and a portion of the Arlington Street sidewalk. Most of the Site is occupied by buildings, all of which will be demolished. The Developer owns the entire Site with the exception of one lot which is under agreement, a second lot which is owned by the Boston Redevelopment Authority, and certain sliver parcels owned by the City of Boston.

General Description of Proposed Development: The Developer plans to construct a single building (the "Building") on the Site which will have its main pedestrian entrances on Boylston Street

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and Park Plaza. A vehicular entrance to loading bays and a subsurface parking garage will be located on Park Plaza. Entrances to ground floor retail establishments will be located on Boylston and Arlington Streets and Park Plaza. The Building will contain approximately 494,000 gross square feet of floor area on twelve (12) above-grade floors, a mechanical penthouse and three (3) below-grade levels, which will contain, in addition to other uses, approximately 175 parking spaces. Of these parking spaces, approximately thirty (30) will be assigned to use by retail and office tenants, and the remaining one hundred forty-five (145) will be devoted to use by the occupants of the residential condominium units. Approximately 61,000 square feet of floor area will be devoted to retail uses on the first and second floors of the Building and the first and third below-grade levels. Approximately 130,000 square feet of office space will be contained on the second, third and fourth floors, while approximately 219,000 square feet of floor area on the remaining floors will be devoted to residential condominium units. The exterior building materials will be brick and limestone or cast stone, with copper mechanical penthouses. The Developer will also construct extensive site improvements, including a public plaza at the southwest corner of the Site, and trees, benches and brick and granite sidewalks along Arlington and Boylston Streets, Park Plaza and Hadassah Way. These improvements together with the Building are referred to herein as the "Development".

Estimated Construction Period: The first phase of demolition on Developer-owned parcels has begun, and all demolition is anticipated to be completed by the Winter of 1985. Construction is anticipated to be completed by the Spring of 1988.

Projected Number of Employees: The Developer estimates that approximately 975 jobs (computed in person-years) will be created during the construction period. The Developer has agreed to formulate an Employment Opportunity Plan, which will detail the

Developer's good faith efforts to achieve a goal that 50% of the permanent employment opportunities created in the Development will be made available to Boston residents. Further, the Developer will submit a Residents Construction Employment Plan, which shall ensure that of the construction employment opportunities created in the Project, 50% will be made available to Boston residents, 25% to minorities and 10% to women.

Development Impact Project Exaction: As required under Section 26-3 of the Boston Zoning Code, the Developer will enter into a Development Impact Project Agreement with the Boston Redevelopment Authority (the "Authority") and the Neighborhood Housing Trust (the "Trust"), or if the Trust has not been established at the time of execution of such Agreement, with the Authority acting on behalf of the Trust. Such Agreement will require the Developer to make a Development Impact Project Exaction (hereinafter, the "Linkage Payment"), which shall be made as a Housing Payment Exaction, or as a Housing Creation Exaction, which is a contribution to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston, under the conditions specified in the Agreement. If the Developer elects to satisfy its Linkage Payment responsibility through money payments, the same shall be made to the Trust or its fiduciary in twelve (12) equal annual installments, all as more fully set forth in the Agreement. The precise amount of the Linkage Payment shall be calculated based upon the gross floor area of the Development as shown on the plan submitted with the application for a building permit; however, it is presently anticipated that the Linkage Payment shall be approximately \$445,000 calculated by taking the gross floor area dedicated to retail and office uses (189,000 square feet), reducing said amount by 100,000 square feet, and multiplying the resulting amount by \$5.00.

Other Financial Commitments of Developer: In addition to agreeing to make the Linkage Payment required under Article 26 of the Boston Zoning Code, the Developer has agreed with the authority to make a voluntary supplemental payment to The Boston Housing Partnership, Inc. in an amount equal to the difference between \$1,000,000.00 and the amount of the Linkage Payment. Such supplemental payment will be made in the same manner in which the Linkage Payment shall be made; that is to say, in twelve (12) equal annual installments on the days set forth in the Agreement for the payment of the Linkage Payment. The Developer has also agreed with the Authority that the commercial portion of the Development shall contribute Seventy-Five Thousand Dollars (\$75,000) annually during the life of the Development to the maintenance of the Boston Public Garden, in addition to the Linkage Payment and the supplemental payment to The Boston Housing Partnership, Inc. This payment shall be made to an organization selected by the Authority and the Developer, whose sole purpose is to maintain and improve the Public Garden. This payment will commence upon initial occupancy of the office and retail portions of the Building and shall be made annually upon the anniversary date of such first payment during the life of the Development. This contribution shall be escalated every three years by a percentage equal to the cumulative change in the Consumer Price Index, but in no event by more than five percent (5%).

Density: The floor area ratio of the Building, not including the below-grade parking area, will not exceed 10.0. The floor area ratio computed with the below-grade parking included will be approximately 11.02. A table showing the calculation of gross floor area is attached hereto as Exhibit B.

Building Dimensions: At its base, the Building will have dimensions of approximately 310 feet by 160 feet. The height of

the Building exclusive of mechanical penthouses will be 85 feet in the first fifty feet of depth from Boylston Street, and 130 feet in remaining portions of the Site.

Proposed Traffic Circulation: Vehicular access to the loading bays and parking areas in the Building will be located on Park Plaza. The Building will have two major pedestrian entrances, one each on Boylston Street and Park Plaza.

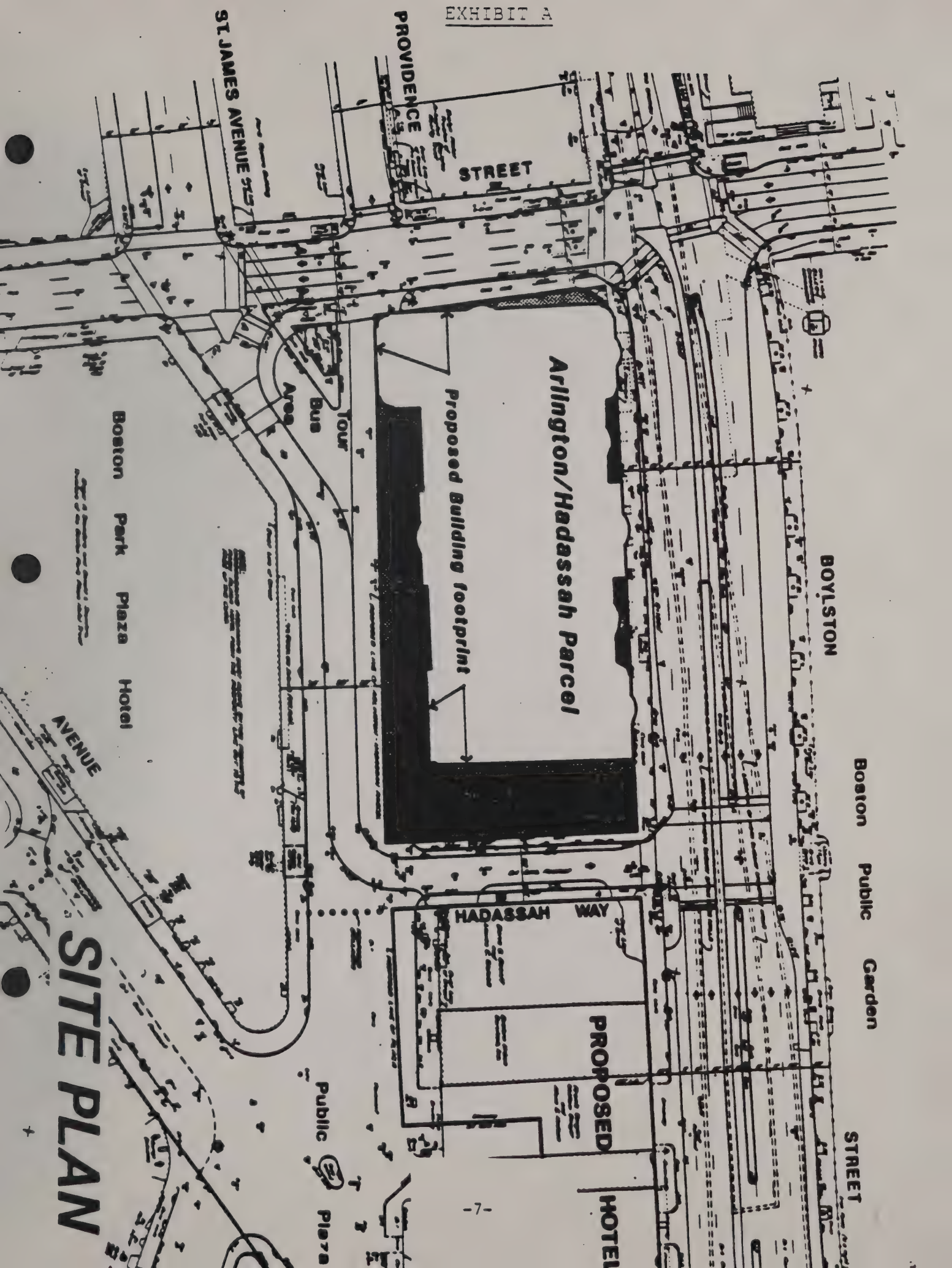
Access to Public Transportation: The Site is located in Park Square adjacent to the Boston Public Garden. Directly adjacent to the Site is the Arlington Street stop on the MBTA Green Line.

Design Drawings: Schematic design plans for the Development have been submitted to and have been approved by the staff of the Authority and the Park Plaza Citizens Advisory Committee. Design development plans dated March 6, 1985 have also been submitted to the staff of the Authority and the Citizens Advisory Committee, were approved by the Citizens Advisory Committee at a meeting on March 12, 1985, and are nearing completion of review by the staff of the Authority. A list of the Design development plans as submitted is attached hereto as Exhibit C. These plans include a site plan, typical floor plans, and elevations for all facades of the Building.

Design Review: All design plans for the Development shall be subject to design review in accordance with the Authority's Design Review Procedures (1984).

Zoning Relief Required: The Site is located in the B-10 and restricted parking zoning districts. The Developer will likely seek variances and a conditional use permit for the following matters:

<u>Subject</u>	<u>Zoning Code Section</u>	<u>Required by Applicable Zoning for the Building</u>	<u>Provided for in the Building</u>
Usable open Space	13-4 and 17-1	50 square feet per dwelling unit.	None
Front yard (Boylston and Providence Streets)	13-4, 18-1 and 18-4	15 feet	None
Side Yard (Arlington Street)	13-4, 18-4 and 19-6	15 feet	None
Floor Area Ratio	15-1	10.0 Maximum	11.02
Traffic Visibility Across a Corner	18-3	30 feet in each direction	None
Parapet Setback	21-1	Approximately 11.75 feet (Park Plaza side only)	None (except to the extent otherwise imposed by applicable height restrictions)
Off-Street Loading	24-1	3 bays	2 bays
Off-Street Parking Accessory to Office and Retail Use	3-1A and 8-7 Use Item No. 72	Conditional Use Permit	



SITE PLAN

EXHIBIT B

GROSS FLOOR AREA CALCULATION

Floor	G.S.F. Bldg. Envelope	Deducts Atrium	Gross Area (BRA)	Gross Area (Zoning Code)
Under Ground				
Third Level	7,756	--	7,756	7,756
Lower Parking	43,410	--	--	43,410
Upper Parking	43,923	--	3,195*	43,923
G	43,434	--	43,434	43,434
2	43,434	718	42,716	42,716
3	43,517	--	43,517	43,517
4	42,831	746	42,085	42,085
5	40,764	--	40,764	40,764
6	39,642	--	39,642	39,642
7	37,181	--	37,181	37,181
8	23,692	--	23,692	23,692
9	22,742	--	22,742	22,742
10	17,940	--	17,940	17,940
11	17,572	--	17,572	17,572
12	16,847	--	16,847	16,847
Penthouse	9,672	--	4,833	4,833
	<u>TOTAL</u>		403,916	488,054

*Area devoted to retail use.

Note: "Gross Area" under the Zoning Code is computed in accordance with the definition of gross floor area set forth in Section 2-1(21) of the Zoning Code as interpreted by the Inspectional Services Department.

EXHIBIT C

LIST OF DESIGN DEVELOPMENT PLANS

North elevation

South elevation

West elevation

Section A

Section BC

Details and material

Site Plan

Utility layout and grading plan

Lower level garage floor plan

Upper level garage floor plan

Ground level floor plan

Second level floor plan

Third level floor plan

Fourth level floor plan

Fifth level floor plan

Sixth level floor plan

Seventh level floor plan

Eighth level floor plan

Ninth level floor plan

Tenth level floor plan

Eleventh level floor plan

Twelfth level floor plan

DEVELOPMENT IMPACT PROJECT AGREEMENT

for

THE HERITAGE ON THE GARDEN
ARLINGTON/HADASSAH SUBPARCEL OF
PARCEL I OF THE PARK PLAZA URBAN RENEWAL AREA

AGREEMENT made as of this day of , 1985, by and between Ronald M. Druker and David C. Bell, as Trustees of The Heritage Residential Realty Trust under Declaration of Trust dated as of May 1, 1985, recorded with Suffolk Registry of Deeds in Book 11574, Page 246, and as Trustees of The Heritage Commercial Realty Trust under Declaration of Trust dated as of May 1, 1985, recorded with Suffolk Registry of Deeds in Book 11574, Page 251, having a mailing address c/o The Druker Company, 50 Federal Street, Boston, Massachusetts 02110 and their successors, assigns and legal representatives (the "Applicant") and the Boston Redevelopment Authority, a body politic and corporate created pursuant to Chapter 652 of the Acts of 1960, as amended (the "Authority") acting for itself and as escrow agent for the Neighborhood Housing Trust (the "Trust"), as contemplated by Article 26 of the Boston Zoning Code (the "Code") and hereafter to be created. The Applicant and the Authority collectively shall be referred to herein as the "parties".

W I T N E S S E T H :

WHEREAS the Applicant has been tentatively designated as the Redeveloper of certain parcels of land (the "Project Site") containing in the aggregate approximately 44,300 square feet and comprising the land lying between Arlington, Boylston and Providence Street and the building known as 250 Boylston Street, constituting a portion of the so-called Arlington/Hadassah Subparcel of Parcel I in the Park Plaza Urban Renewal Area, which

parcels are identified on the plan attached to that certain Letter of Intent (the "Letter of Intent") dated June 19, 1984, between the Authority and The Druker Company; and

WHEREAS, the Applicant proposes to construct on the Premises a mixed use development comprised of a single building containing residential condominium units, office and retail space and a below-grade parking facility (the "Project") which constitutes a "Development Impact Project" as defined in Section 26-2 of the Code as in effect on the date hereof; and

WHEREAS, the Neighborhood Housing Trust contemplated by Article 26 of the Code has not yet been created;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1. DEVELOPMENT IMPACT PROJECT PLAN

1.1 Development Impact Project Plan. The parties hereby acknowledge that the Applicant submitted to the Authority a Development Impact Project Plan (the "Plan") as required by Section 26-3 of Article 26 of the Code, and after a public hearing held on _____, 1985, notice of which was published in the Boston Herald on _____, 1985, the Authority approved the Plan on _____, 1985. The Applicant will cause the Project Site to be developed in accordance with the Plan.

ARTICLE 2. LINKAGE PAYMENT

2.1 Linkage Payment. The Applicant shall be responsible, in accordance with the terms of this Agreement, for a Development Impact Project Exaction (hereinafter "Linkage Payment") as such term is defined in Section 26-2(3) of the Code, in the amount calculated in accordance with Section 2.4 of this Agreement. The

Applicant may, at its option, satisfy its obligation for the Linkage Payment, in whole or in part, by contributing to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston, as described in Section 2.2, Housing Creation Option, or by payments made in accordance with Section 2.3, Housing Payment Option.

2.2 Housing Creation Option. If the Applicant shall elect to contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston, the Applicant shall submit a proposal in writing to the Authority on or before the Payment Date, as defined in Section 2.6. Such proposal, approved in accordance with the Housing Creation Regulations (the "Regulations"), shall satisfy the provisions of the Housing Creation Exaction set forth in Section 26-1(3)(b) of Article 26 of the Code. The proposal shall include a description of the number, location, cost and design of the housing units. In the event the Applicant elects to satisfy its obligation for the Linkage Payment, in whole or in part, through the Housing Creation Option, the Applicant agrees to comply with the Regulations.

2.3 Housing Payment Option. If the Applicant shall elect to contribute money payments, said payments shall be paid to the City of Boston acting by and through the Trust, or in the event the Trust has not been created, to the Authority. The payments shall be made in twelve (12) equal annual installments. The first installment of the Housing Payment Option shall be due and payable on the Payment Date, as defined in Section 2.6, and subsequent installments shall be due and payable without interest on the following eleven (11) anniversary dates of the Payment Date.

2.4 Calculation of Linkage Payment. The parties hereby acknowledge that the Project will include certain uses enumerated in Table C of Article 26 of the Code, including retail and office

uses. It is anticipated that the gross floor area of the Project devoted to one or more such uses in the aggregate will exceed one hundred thousand (100,000) square feet. Said gross floor area devoted to such uses is expected to be approximately one hundred eighty-nine thousand (189,000) square feet, based upon design development drawings for the Project. On the basis of this figure, the amount of the Linkage Payment, as referred to in Section 2.1, will approximate a total of four hundred forty-five thousand dollars (\$445,000.00). The parties acknowledge that the amount of the Linkage Payment is based upon gross floor areas as estimated in the Plan. If the gross floor area, as defined in Section 2-1(21) of the Code and as certified by the Project Architect (as identified in the Plan), differs from the above stated estimate, this Agreement shall be amended by incorporating a schedule approved by the Director of the Authority (the "Director") adjusting the amount of the Linkage Payment in accordance with Article 26 of the Code.

2.5 Recalculation. The Authority hereby agrees, subject to the recalculation provisions contained in Section 2.4, that any change in the rate of the Linkage Payment as may be adopted shall not in any way increase the Linkage Payment determined in accordance with Section 2.4.

2.6 Payment Date. The Payment Date shall be the earlier of either the issuance of a Certificate of Occupancy for the Project or twenty-four (24) months after the granting of the building permit for the Project.

2.7 Waiver of Linkage Payment. If a building permit is not granted for any part or the whole of the Project, or if construction of any part or the whole of the Project is abandoned after a building permit is obtained prior to the commencement of substantial construction (the commencement of excavation, foundation and other subsurface work shall constitute substantial

construction), or if a building permit lapses for any part or the whole of the Project and such permit is not renewed, then the Applicant shall have no responsibility for the Linkage Payment or any Supplemental Payment (as hereinafter defined) with respect to such part or the whole of the Project, as applicable.

2.8 Credit Toward Linkage Payment. If the City of Boston should hereafter impose, assess, or levy any excise or tax upon the Project, the proceeds of which are dedicated, in whole or in part, to the establishment of a fund for purposes substantially the same as the purposes recited in Section 26-1 of Article 26 of the Code, amounts payable hereunder by the Applicant shall be credited against such excise or tax; provided, however, that if such crediting shall not be legally permissible to satisfy payment of such tax or excise, the obligations of the Applicant hereunder shall, to the extent of the amount of such tax or excise, thereupon cease and be of no further force or effect.

ARTICLE 3. RESIDENT CONSTRUCTION EMPLOYMENT PLAN

3.1 Boston Residents Construction Employment Standards. The Applicant shall submit a plan, to be known as a Boston Residents Construction Employment Plan, to the Director of the Authority, which plan shall set forth in detail the Applicant's plans to ensure that its Contractor, and those engaged by said Contractor for construction of the Project, on a craft by craft basis, meet the following Boston Residents Construction Employment Standards: (1) at least 50 percent of the total employee workerhours in each trade shall be by bonafide Boston residents; (2) at least 25 percent of the total employee workerhours in each trade shall be by minorities; and (3) at least 10 percent of the total employee workerhours in each trade shall be by women. The Applicant shall include in the plan provisions for monitoring, compliance and sanctions. The Applicant shall submit the plan prior to the issuance of a building permit.

3.2 Workerhours Defined. For purposes of this Article, workerhours shall include on-the-job-training and apprenticeship positions.

ARTICLE 4. EMPLOYMENT OPPORTUNITY PLAN.

4.1 Employment Opportunity Plan. The Applicant shall formulate an Employment Opportunity Plan that shall provide for the Applicant's good faith efforts to achieve a goal that 50 percent of the permanent employment opportunities created by the Project shall be made available to Boston residents. The Applicant shall submit the plan within one year from the execution of this Agreement.

ARTICLE 5. SUPPLEMENTAL PAYMENT.

5.1 Boston Housing Partnership, Inc., Contribution. The parties acknowledge the Applicant's agreement, as set forth in the Letter of Intent, to contribute the difference between One Million Dollars (\$1,000,000.00) and the amount of the Linkage Payment to the Boston Housing Partnership, Inc., for a joint private-public neighborhood housing program. Such payment shall be made in twelve (12) equal annual installments at the times prescribed in Section 2.3 for the payment of installments of the Linkage Payment. Such contribution together with the payments referred to in Section 5.2 shall be referred to herein as the "Supplemental Payment".

5.2 Boston Public Garden Contribution. Commencing at initial occupancy in the commercial portion of the Project, a per annum contribution of Seventy-Five Thousand Dollars (\$75,000.00) shall be made from that portion of the Project to an entity to be designated by the Authority and the Applicant for the maintenance and improvement of the Boston Public Garden. Said annual contributions shall be made for the life of the Project, said

requirement to be binding upon the Applicant's successors and assigns, and shall be escalated every three years by a percentage equal to the cumulative change in the Consumer Price Index, but in no event by more than five percent (5%).

ARTICLE 6. LIABILITY.

6.1 Scope of Applicant's Liability. The Authority agrees to look solely to the interest from time to time in the Project of the Applicant or its successors or assigns, as the case may be, for any claim against the Applicant or its successors arising under this Agreement in connection with the Project.

6.2 Personal Liability. Neither the Applicant or its successors or assigns, nor any trustee, beneficiary, partner, stockholder, manager, officer, director, agent or employee of the Applicant or of its successors or assigns, shall be personally or individually liable under this Agreement, nor shall it or they be liable or answerable in any equitable proceeding or order beyond the extent of its or their interest in the Project.

6.3 Monetary Liability. Notwithstanding anything else to the contrary contained in this Agreement, the obligations contained in Articles 2 and 5 hereof shall be obligations of The Heritage Commercial Realty Trust, and not The Heritage Residential Realty Trust, the Authority agreeing to look solely to the former, and not the latter, for any obligations contained in or arising out of such Articles. All other obligations herein contained shall be obligations of both such Trusts.

ARTICLE 7. MISCELLANEOUS PROVISIONS.

7.1 Amendments; Law to be Applied. If the parties agree hereafter to amend this Agreement, such amendment shall be in writing and executed by the parties hereto. This Agreement shall

be governed by the laws of the Commonwealth of Massachusetts and sets forth the entire agreement between the parties. This Agreement is binding and enforceable under contract law upon, and inures to the benefit of, the parties, their successors, assigns, and legal representatives, including, without limitation, any successor owner of the Project, and the Trust as successor to the Authority as and when such Trust shall be established, notwithstanding any subsequent amendment or repeal of Article 26 of the Code or court decision having the effect of an amendment or repeal of Article 26 of the Code.

7.2 Capitalized Terms. The capitalized terms used herein without definition shall have the meanings ascribed in Article 2 or Article 26 of the Code, unless otherwise provided.

7.3 Knowledge of Laws. Applicant shall keep itself fully informed of, and shall at all times observe and comply with, all applicable local, state and federal laws and regulations which affect the provisions of this Agreement.

7.4 Notice. All notices under this Agreement must be in writing and sent certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses (or at such other address or addresses as to which either party shall notify the other from time to time):

Authority:	Boston Redevelopment Authority Director's Office City Hall Square Boston, Massachusetts 02201
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With a copy to:	Boston Redevelopment Authority Chief General Counsel City Hall Square Boston, Massachusetts 02201
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Applicant:	The Heritage Commercial Realty Trust The Heritage Residential Realty Trust c/o The Druker Company
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50 Federal Street
Boston, Massachusetts 02210

7.5 Record Notice of Agreement. The Applicant shall record at the Suffolk County Registry of Deeds, a notice of this Agreement, in a form reasonably satisfactory to both parties. The Authority agrees from time to time within twenty (20) days following written request from the Applicant therefor, to provide the Applicant with a certificate of compliance in recordable form prepared by the Applicant and approved by the Director setting forth the Applicant's then state of compliance with respect to the obligations contained in this Agreement.

7.6 Satisfaction of Development Impact Project Requirements. The Authority hereby acknowledges that by executing this Agreement, the Applicant has satisfied the requirements of Section 26-3(2) of the Code insofar as satisfaction of the requirements of that Section is a precondition to the granting, allowing, or adopting of a variance, conditional use permit, exception, or zoning map or text amendment with respect to the Applicant's development of the Project Site.

7.7 Titles. The captions of this Agreement, its articles and sections throughout this Agreement, are intended solely to facilitate the reading and referencing of its provisions. Such captions shall not affect the meaning or interpretation of this Agreement.

7.8 Transfer of Interest. Except to lenders providing funds to the Applicant in connection with the Project, by way of a pre-construction, construction, interim or so-called permanent loan, rights and interests accorded by this Agreement shall not be assigned, delegated, subcontracted or in any way transferred by the Applicant without prior written notice to the Authority.

WITNESS, the execution hereof under seal, as of the day and year first set forth above, in any number of counterpart copies, each of which shall be deemed an original for all purposes.

THE HERITAGE RESIDENTIAL REALTY
TRUST and THE HERITAGE
COMMERCIAL REALTY TRUST

By: _____
Ronald M. Druker,
As Trustee as aforesaid
and not individually

By: _____
David C. Bell,
As Trustee as aforesaid
and not individually

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel
Boston Redevelopment Authority

By: _____
Stephen Coyle, Director
Hereunto duly authorized

